212 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14281-2017
Decided on: 29.01.2024

Upasna Jain … Petitioner

Versus

State of Haryana and others … Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. J.S. Hooda, Advocate, for the petitioner.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Mr. Pavan Malik, Advocate,
for respondents No.3 to 8, 10, 12 & 13.

***

RAJESH BHARDWAJ, J.

Prayer in the present petition is for setting aside the impugned order dated 19.01.2017 (Annexure P-4), passed by learned Commissioner, Gurgaon Division, Gurgaon, whereby, the revision filed by respondent No.1 after issuance of *Sanad Takseem* on 23.12.2015 (Annexure P-3) has not only been entertained but adjudicated too in absolute illegal and arbitrary manner, whereas, as per settled law, Revenue Court cease to have any power to adjudicate upon the partition proceedings after issuance of *Sanad Taqseem* i.e. final instrument of partition.

It has been contended by learned counsel for the petitioner that the petitioner purchased the share of Smt. Sushila and thereafter, the petitioner filed an application seeking partition of land in dispute. He submits that mode of partition was finalized and *Naksha Kha* was prepared, which was approved on 07.04.2015. He submits that appeal filed by respondents No.3 to 5 before the Collector was dismissed on 27.11.2015 and thus, the order passed by the learned Assistant Collector on 07.04.2015 was upheld and thereafter, *Sanad*

Takseem was issued on 23.12.2015. He has submitted that respondents No.3 to 5 filed revision petition before the learned Commissioner impugning the order dated 07.04.2015 and 27.11.2015 without challenging the final instrument of partition i.e. *Sanad Takseem* dated 23.12.2015. He submits that after the issuance of *Sanad Takseem*, the learned Commissioner illegally remanded the case to the Assistant Collector First Grade, Nuh vide order dated 19.01.2017. It has been submitted that as the partition proceedings were initiated before the amendment of Section 16 of Punjab Land Revenue Act, 1887 (for short, "the Act") which came into effect on 01.04.2017, revision filed by respondents No.3 to 5 was maintainable before the learned Financial Commissioner and not before the Commissioner. He submits that hence, the impugned order has been passed without jurisdiction. He has submitted that as the revision petition filed before the Commissioner was not maintainable, hence, the impugned order being without jurisdiction deserves to be set aside.

Learned counsel for respondents No.3 to 8, 10, 12 & 13 though has opposed the submissions made by counsel for the petitioner on merits, however, it could not be denied that the partition proceedings having been initiated prior to the amendment of Section 16 of the Act and hence, the learned Financial Commissioner was the competent authority for entertaining the revision petition filed.

After hearing learned counsel for the parties and perusing the record, it is evident that the amendment of Section 16 of the Act came into effect on 01.04.2017. The partition proceedings were initiated prior to the amendment and thus, the learned Financial Commissioner as per the provisions of un-amended Section 16 of the Act, was the competent authority for entertaining the revision petition. Thus, without commending on the merits of the case, this Court finds the impugned order dated 19.01.2017 to be unsustainable in the eyes of law and hence, the same is set aside.

However, the private respondents are at liberty to avail their remedy of filing of revision petition before the learned Financial Commissioner, within a period of two weeks from the date of receipt of certified copy of this order, in accordance with law. On filing of the appropriate revision petition, the learned Financial Commissioner would take into consideration the period of pendency of this petition for considering the issue regarding limitation. As evident, the operation of the impugned order was stayed by this Court vide order dated 06.07.2017 while issuing notice of motion, thus, the status quo would be maintained till the decision of the revision petition.

In view of the observations made hereinabove, if any such revision petition is filed, the learned Financial Commission is directed to decide the same after hearing both the sides, expeditiously preferably within a period of three months from the date of its filing, in accordance with law.

The present petition stands allowed in aforementioned terms and the order dated 19.01.2017 (Annexure P-4) passed by the learned Commissioner, Gurgaon Division, Gurgaon is set aside.

(RAJESH BHARDWAJ)
JUDGE

29.01.2024
sharmila

Whether speaking/reasoned Yes/No
Whether reportable Yes/No